IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.5042 OF 2006
IN
FIRST APPEAL (STAMP) NO.36083 OF 2001

State of Maharashtra & Ors. .. Applicants

Vs.

Balya Ragho Patil (Since deceased
Through his L.Rs. Smt.Banibai Dhondu
Sutar and Ors. .. Respondents

Mr.A.R.Patil, A.G.P. for the applicants

Mr.R.S.Datar for the respondents

CORAM : J.N.PATEL &
A.A.SAYED, JJ.

DATED : 19TH JUNE, 2007

P.C.:

1. This is an application for condonation of delay filed by the State stating that the delay of one year and 38 days has been caused because of the time consumed by the office of the District Government Pleader, Thane in processing the matter. The respondents have filed their reply today in the court and have brought to the notice of the court that though the appeal was preferred it was not

registered as it was beyond the stipulated period of limitation and further, no application for condonation of delay was filed which came to be filed on 14.07.05 and factually speaking the delay is of approx. 6 years.

2. Though it is not necessary to refer to the subject matter of the appeal for the purpose of condoning the delay but this is a peculiar case where the State acquired the land of the respondent without resorting to due process of law and the respondent was left with no alternative but to seek remedy against the State.

3. The learned counsel for the respondent has also brought to our notice that on the orders of this court reference in the matter was preferred and the reference court has passed an award which is challenged by M.I.D.C. for which the land was acquired and that appeal is admitted on 8.1.07 i.e. F.A. No.2866 of 2006.

4. On going through the affidavit in support of the application for condonation of delay and the

reply, we find that the reasons put forth in the application for seeking the condonation of delay is far from satisfactory. It only reflects the casual manner in which the office of the District Government Pleader (Thane) is functioning. The District Government Pleader (Thane) did not even care to apply for certified copy of the judgment and order and slept over the matter. The justification which is tried to be put forth is that due to overburden of work, steps could not have been taken to obtain certified copy of the judgment and order and refer the matter for preferring an appeal.

5. Surprisingly, this is not substantiated by clarifying the nature of burden and appears to be usual excuse put forth by office of the Government Pleader. Though we are not satisfied with the reasons given in the application for condonation of delay, we are inclined to condone the delay as it pertains to compensation awarded against the State which has direct bearing on the public exchequer but then it is subject to cost of Rs.25000/- which shall be condition precedent and the State would

deposit the cost in this court or pay to the respondent within two weeks from the date of passing of the order.

6. We further make it clear that it will be open for the State Government to recover the cost from the law officers and staff of the District Government Pleader at Thane for such negligence on their part after conducting necessary enquiry. It appears that the office of the District Government Pleader at Thane requires to be streamlined and updated by appointing competent law officers and staff who have a sense of duty towards the public whose cause they represent.

7. We direct the Registrar (Judicial) of this court to forward the copy of this order to the Principal Secretary (Law and Judiciary) so as to bring to his notice the manner in which office of the District Government Pleader at Thane is functioning and take remedial steps and corrective measures to improve the same. Otherwise the State would continue to suffer at the cost of public exchequer.

8. By consent, the appeal is taken up for admission. Heard. Admit. Office to register the appeal. The same be listed with First Appeal No.4455 of 2004.

9. S.O. 2 weeks.

10. Authenticated copy of this order be made available to the learned A.G.P. for compliance.

(SHRI J.N. PATEL, J)

(SHRI A.A. SAYED, J)